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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,634	03/09/2001	Shimon Shmueli	4989-005	8535
27820	7590	09/28/2005	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C. P.O. BOX 1287 CARY, NC 27512			ART UNIT	PAPER NUMBER

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

### **Notice of Defective Appeal Brief**

A review of Appellant's Appeal Brief filed 1/1/2005 by the Board of Appeals has revealed that the application is not ready for an Examiner's Answer. Accordingly, this Notice of Defective Appeal Brief is being sent to the Appellant. The matters requiring attention prior to and Examiners Answer are identified below:

The Appeal Brief does not comply with 37 CFR § 41.37(c). The specific errors found in the Appeal Brief are checked for the appropriate requirement needing attention. See also "Order Returning Undocketed Appeal To Examiner" mailed September 19, 2005:

#### **Requirement 1 \_\_X\_\_**

A review of the file indicates that appellant filed the Appeal Brief of January 27, 2005 using the format set forth in 37 CFR § 1.192(c). However, 37 CFR § 1.192 was abolished on September 13, 2004, and replaced by 37 CFR § 41.37(c). Accordingly, the Appeal Brief filed on January 27, 2005 does not comply with 37 CFR § 41.37(c).

**37 CFR S 41.37(c) states:**

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**Requirement 2 \_\_\_\_**

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c) (1) (i) through (c) (1) (x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c) (1) (iv) and (c) (1) (vii) **through (c) (1) (x)** of this section:

**Requirement 3 \_\_\_\_**

(i) Real party in interest. A statement identifying by name the real party in interest.

**Requirement 4 \_\_\_\_**

(ii) Related appeals and interferences. A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

**Requirement 5 \_\_\_\_**

(iii) Status of claims. A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

**Requirement 6 \_\_\_\_**

(iv) Status of amendments. A statement of the status of any amendment filed subsequent to final rejection.

**Requirement 7 X**

(v) Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with

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reference to the specification by page and line number, and to the drawing, if any, by reference characters.

**Requirement 8 X**

(vi) Grounds of rejection to be reviewed on appeal. A concise statement of each ground of rejection presented for review.

**Requirement 9**

*(vii) Argument.* The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim

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alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

**Requirement 10 \_\_\_\_**

(viii) *Claims appendix.* An appendix containing a copy of the claims involved in the appeal.

**Requirement 11 X**

(ix) *Evidence appendix.* An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include

copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

**Requirement 12   X**

(x) *Related proceedings appendix*. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c) (1) (ii) of this section.

**Requirement 13**

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

**Requirement 14**

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for noncompliance and given a time period within which to file an amended brief. If appellant does not file an

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amended brief within the set time period, or files an amended brief which does not overcome all the reasons for noncompliance stated in the notification, the appeal will stand dismissed.

A substitute brief that is in compliance with 37 CFR § 41.37(c) is required.

Since the above-mentioned Appeal Brief appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.usoto.aov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

### ***Conclusion***



Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

**Alexandria, Va. 22313-1450**

or faxed to:

**(571) 273-8300** [Official communications; including

After Final communications labeled

"Box AF"]

**(571) 273-6755** [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]

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A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal flourish extending to the right.

Mark Fadok

Primary Examiner